

Appl. No. 10/724,839
Docket No. P147
Amdt. dated December 20, 2007
Reply to Office Action mailed on July 20, 2007
Customer No. 27752

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REMARKS

Claim Status

Claims 1 – 63 are pending in the present application. No additional claims fee is believed to be due. Claims 1 – 31 and 56 – 63 have been withdrawn as a result of an earlier restriction requirement. Claims 36, 37, 44, 45, 49, and 50 have been amended. It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Double Patenting

Claims 32, 33, 35, 38 – 43, 46 – 48, and 51 – 55 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 9 – 20 of copending Application No. 10/725, 251. This rejection is not expressly agreed with or acquiesced to. Nevertheless, in an effort to gain timely allowance of the claims, a terminal disclaimer in accordance with 37 CFR § 1.321 is being submitted herewith. Applicants respectfully request reconsideration and withdrawal of the rejection.

Claims 32, 33, 47 and 48 have been provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 37 – 40, 46 and 47 of copending Application No. 10/725,248. This rejection is not expressly agreed with or acquiesced to. Nevertheless, in an effort to gain timely allowance of the claims, a terminal disclaimer in accordance with 37 CFR § 1.321 is being submitted herewith. Applicants request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 112, Second Paragraph

Claims 36, 37, 44, 45, 49, and 50 have been rejected under 35 U.S.C. § 112, Second Paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicants respectfully traverse this rejection. The Office Action states that the “claims herein recites the phrases ‘the fructooligosaccharide comprises inulin’ and ‘the fructooligosaccharide comprises chicory.’ Fructooligosaccharide in itself in a polymeric compound. It is not clear how a compound can contain another compound or another composition.” Claims 36, 44, and

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49 have been amended to recite "the fructooligosaccharide is inulin" and Claims 37, 45, and 50 have been amended to recite "the fructooligosaccharide is chicory." Support for these amendments may be found on page 3, lines 32 – 33 and page 5, line 14. Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 102 Over Vickers

Claims 32 – 37 and 47 have been rejected under 35 U.S.C. § 102 as being anticipated by Vickers et al (American Journal of Veterinary Research (AJVR) 62(4), 2001, 609 – 615)("Vickers"). Applicants respectfully traverse this rejection.

Vickers is directed to a comparison of "fermentation characteristics of fructooligosaccharides (FOS) and other fiber substrates that are commonly found in canine diets." Page 609, Col. 1, Objective. Vickers, however, fails to teach each and every element of the claims. Claim 32 is directed to, *inter alia*, a method selected from the group consisting of enhancing calcium absorption, improving bone health, improving strength, improving physical activity performance, and combinations thereof, the method comprising administering to a companion animal a companion animal composition comprising fructooligosaccharide. As best understood by Applicants, Vickers fails to teach administering to a companion animal a companion animal composition comprising fructooligosaccharide to enhance calcium absorption, improve bone health, improve strength, improve physical activity performance, and combinations thereof. Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 102 Over Howard

Claims 32, 33, 47, 48 and 51 – 53 have been rejected under 35 U.S.C. § 102 as being anticipated by Howard et al (Nutrition Research, 2000, 20(10), 1473 – 1484)("Howard"). Applicants respectfully traverse this rejection.

Howard discloses that "[t]wenty-eight adult ovariectomized dogs were fed one of four diets differing in type of dietary fiber to assess the effects of fiber on energy digestibility, partitioning of nitrogen (N) components, and changes in intestinal microflora." *Abstract*. Howard, however, fails to teach each and every element of the claims. Claim 32 is directed to, *inter alia*, a method selected from the group consisting of enhancing calcium absorption, improving bone health, improving strength, improving

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physical activity performance, and combinations thereof, the method comprising administering to a companion animal a companion animal composition comprising fructooligosaccharide. As best understood by Applicants, Howard fails to teach administering to a companion animal a companion animal composition comprising fructooligosaccharide to enhance calcium absorption, improve bone health, improve strength, improve physical activity performance, and combinations thereof. Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 102 Over Sparkes

Claims 32, 33, 35 and 37 have been rejected under 35 U.S.C. § 102 as being anticipated by Sparkes et al (American Journal of Veterinary Research, AJVR, 59(4), 1998, 431 – 435)(“Sparkes”). Applicants respectfully traverse this rejection.

Sparkes is directed to investigating “changes in the duodenal flora of healthy cats over time” and evaluating “the effect of dietary supplementation with fructo-oligosaccharides (FOS).” Page 431, Col 1, Objective. Sparks, however, fails to teach each and every element of the claims. Claim 32 is directed to, *inter alia*, a method selected from the group consisting of enhancing calcium absorption, improving bone health, improving strength, improving physical activity performance, and combinations thereof, the method comprising administering to a companion animal a companion animal composition comprising fructooligosaccharide. As best understood by Applicants, Sparkes fails to teach administering to a companion animal a companion animal composition comprising fructooligosaccharide to enhance calcium absorption, improve bone health, improve strength, improve physical activity performance, and combinations thereof. Applicants respectfully request reconsideration and withdrawal of the rejection.

Rejection Under 35 U.S.C. § 103(a) Over Howard in view of Roberfroid

Claims 32 – 55 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Howard in view of Roberfroid (Nutrition, 16, 2000, 677 – 679). Applicants respectfully traverse this rejection.

Howard discloses that “[t]wenty-eight adult ovariectomized dogs were fed one of four diets differing in type of dietary fiber to assess the effects of fiber on energy digestibility, partitioning of nitrogen (N) components, and changes in intestinal

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microflora." *Abstract.* Roberfroid is directed to the "composition and source of inulin and oligofructose, the physiologic effects of their consumption, and how these materials relate to the concept of dietary fiber." Page 677, Col 1, lines 4 – 7. Howard and Roberfroid, either alone or in combination, however, fail to teach the current claims. As noted above, as best understood by Applicants, Howard fails to teach administering to a companion animal a companion animal composition comprising fructooligosaccharide to enhance calcium absorption, improve bone health, improve strength, improve physical activity performance, and combinations thereof. As best understood by Applicants, Roberfroid does not discuss the use of fructooligosaccharides in companion animal diets. As noted in the current application, "companion animals differ from humans in their ability to metabolize and utilize dietary fibers including fructooligosaccharide" and "biological effects will vary between dogs, cats and humans based on these differences." Page 1, lines 29 – 32. As Roberfroid fails to teach the use of fructooligosaccharides in companion animals, Roberfroid fails to provide any reasonable expectation of success in providing fructooligosaccharides to a companion animal to enhance calcium absorption, improve bone health, improve strength, improve physical activity performance, and combinations thereof in a companion animal. Howard and Roberfroid, either alone or in combination, fail to render the claims of the current application obvious. Applicants respectfully request reconsideration and withdrawal of the rejection.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied references. In view of the foregoing, entry of the amendments presented herein, reconsideration of this application, and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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